IN THE SUPREME COURT
APPEAL FROM THE COURT OF APPEALS
[RICHARD ALLEN GRIFFIN, MARK J. CAVANAGH, KAREN M. FORT HOOD]

FORD MOTOR COMPANY,

Petitioner-Appellant,

v

BRUCE TOWNSHIP,

Respondent-Appellee.
_____/

Supreme Court No. 127424

Court of Appeals No. 246579

Michigan Tax Tribunal No. 288822

FORD MOTOR COMPANY,

Petitioner-Appellant,

v

CITY OF WOODHAVEN and COUNTY OF WAYNE,

Respondents-Appellees.
_____/

Supreme Court No. 127422

Court of Appeals No. 246378

Michigan Tax Tribunal No. 294958

FORD MOTOR COMPANY,

Petitioner-Appellant,

v

CITY OF STERLING HEIGHTS,

Respondents-Appellees.
_____/

Supreme Court No. 127423

Court of Appeals No. 246379

Michigan Tax Tribunal No. 294924

BRIEF ON APPEAL – APPELLEE CITY OF STERLING HEIGHTS

Oral Argument Requested

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STATEMENT OF THE BASIS OF JURISDICTION

Respondent/Appellee, City of Sterling Heights ("Appellee"), agrees that this Michigan Supreme Court has Jurisdiction over this appeal filed by the Petitioner/Appellant, Ford Motor Company ("Appellant").

COUNTER STATEMENT OF THE QUESTION INVOLVED

I. WHETHER THE COURT OF APPEALS PROPERLY AFFIRMED THE MICHIGAN TAX TRIBUNAL'S RULING THAT FORD MOTOR COMPANY WAS NOT ASSESSED AND DID NOT PAY TAXES IN EXCESS OF THE CORRECT AND LAWFUL AMOUNT DUE BECAUSE OF A MUTUAL MISTAKE OF FACT MADE BY ITSELF AND THE ASSESSING OFFICER ?

Appellant says: "NO"

Appellee says: "YES"

Court of Appeals says: "YES"

Tax Tribunal says: "YES"

I. COUNTER STATEMENT OF STANDARD OF REVIEW

A. Review of Tax Tribunal Decisions/Error of Law.

According to this Michigan Supreme Court, absent allegations of fraud, a court reviews decisions of the Tax Tribunal for an error of law:

> "Furthermore, court review of decisions of the tax tribunal, in the absence of fraud, is limited to determining whether the tribunal made an **error of law** or adopted a wrong principle; the factual findings of the tribunal are final, provided that they are supported by competent and substantial evidence." (**Antisdale** v **City of Galesburg**, 420 Mich. 265; 362 NW2d 632, 637 (1984).) (Emphasis Added)

Here, the Court of Appeals properly affirmed the Tax Tribunal's ruling that the Appellant was not assessed and did not pay taxes in excess of the correct and lawful amount due as a result of a mutual mistake of fact made by both Appellant and the assessing officer.

II. COUNTER STATEMENT OF RELEVANT AND CONTROLLING FACTS

Prior to 1999, Appellant allegedly sold certain pieces of personal property which otherwise would be taxable.

> "Petitioner sold Property in a sale/leaseback transaction (the "Sold Property"). Prior to being sold, the Property was carried on Petitioner's books as Petitioner's personal property." (Appellant's Petition at p. 2.) (**Appellant's Appendix at p. 39a**).

Despite having sold this property, Appellant alleges that it failed to remove this property from its own books and records and reported this information for tax purposes.

> "After leasing back the Sold Property, Petitioner capitalized the leased property (the "Leased Property") on its books, but did not remove the Sold Property despite the fact that it had been sold. As a result, both the Sold Property, and the Leased Property (which are in fact the identical physical property), were separately carried on Petitioner's books and reported for property tax purposes. The effect was the mistaken reporting of duplicate Property that did not exist." (Appellant's Petition at p. 2.) (**Appellant's Appendix at p. 39a**).

Specifically the Appellant reported this information to the Appellee in February 1999, when the Appellant submitted a sworn personal property tax statement to the Appellee which referenced the sold property (**Appellee's Appendix at p. 1b**).

> "...Appellant capitalized the Leased property..., but did not remove the Sold property despite the fact that it had been sold. As a result, both the Sold property and the Leased Property...were separately carried on Appellant's books and reported for property tax purposes." (**Appellant's Appendix at p. 39a, paragraph 8(a).**)

Appellee generated a tax bill based solely on Appellant's sworn figures. Appellant paid the tax accordingly.

Three years later, Appellant discovered that the personal property statement at issue listed the sold and non-existent property. On August 28, 2002, Appellant filed its tax appeal for tax year 1999 with the Michigan Tax Tribunal ("Tribunal") under the auspices of MCL 211.53a (**Appellant's Appendix at p. 38a-41a**).

On October 3, 2002, in lieu of an answer, Appellee filed its Motion for Summary Disposition in the Tribunal pursuant to both MCR 2.116(C)(8) and (C)(10) (**Appellee's Appendix at p. 37b**). **Appellant did not file any response to Appellee's Motion**. Pursuant to Tribunal rule, there was no oral argument. On January 9, 2003, the Tax Tribunal issued its Order granting Appellee's **Unopposed** Motion to Dismiss (**Appellant's Appendix at p. 42a-43a**). The Court of Appeals affirmed the Tax Tribunal's ruling (**Appellant's Appendix at p. 66a-73a**).

III. SUMMARY OF THE ARGUMENT AS REQUIRED BY MCR 7.306(B)

This case arises solely out of Appellant's contention that there was a "mutual mistake of fact" made by both Appellant *and* Appellee's Assessor resulting in an erroneous assessment (**Appellant's Appendix at p. 39a**). Appellant is flatly wrong.

The facts show that there was only a **unilateral** mistake of fact committed solely by Appellant. The tax assessment in this case was not the result of a mutual mistake by both Appellant and Appellee and, therefore, Appellant does not qualify for relief under MCL 211.53a:

> "Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error *or mutual mistake of fact made by the assessing officer and the taxpayer* may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest." (MCL 211.53a) (Emphasis Added).

On August 28, 2002, Appellant filed its property tax appeal for tax year 1999 with the Tax Tribunal under the auspices of MCL 211.53a. (**Appellant's Appendix at p. 38a-41a**). In its Petition dated August 28, 2002, Appellant **admitted** that it made an error in reporting its property:

> "...Appellant capitalized the Leased property..., but did not remove the Sold property despite the fact that it had been sold. As a result, both the Sold property and the Leased Property...were separately carried on Appellant's books and reported for property tax purposes." (**Appellant's Appendix at p. 39a, paragraph 8(a).**)

The error here was committed solely by Appellant. Appellee had no access to this information, nor could it have had contemplated this information at the time Appellant committed the error. The Appellant had sole and full control of the information relating to this error. The Appellant had sole and full control of the information relating to this error.

Appellee's Assessing Department, after receiving the reported information from Appellant, reasonably relied on the information and determined the property's assessment. Appellant's personal property statement (**Appellee's Appendix at p. 1b**),

as with all personal property statements, does not reveal any information which would alert Appellee that the same piece of property is being reported twice. The personal property statement simply reports figures. In fact, the personal property statement contains a clear and unambiguous declaration ***under oath*** signed by the Appellant's own agent which states the following:

> "I, Susan Van Wagenen, being duly sworn, depose and say that the above is a full and true statement of all tangible personal property owned or held by Ford Motor Company in this assessing district on the thirty-first (31st) day of December, 1998." (**Appellee's Appendix at p. 2b)**

Accordingly, the assessment was based strictly on Appellant's own reported figures which were under the sole control of the Appellant. As a result, there was no mutual mistake of fact and the Court of Appeals properly affirmed the Tribunals finding that the Appellant was not entitled to a refund under MCL 211.53a.

IV. LEGAL ARGUMENTS

A. The Court of Appeals Properly Affirmed The Michigan Tax Tribunal's Ruling That Ford Motor Company Was Not Assessed and Did Not Pay Taxes In Excess of the Correct and Lawful Amount Due Because of a Mutual Mistake of Fact made By Itself and the Assessing Officer.

Standard of Review = Error of Law

Here, the Court of Appeals affirmed the Michigan Tax Tribunal's ruling that the Appellant was not entitled to a refund under MCL 211.53a because the Appellant did not pay taxes in excess of the correct amount as a result of a mutual mistake of fact.

> "Here, the assessing officer and the taxpayer, petitioner, were not operating under the same mistake of fact. **The direct cause of the excess assessment was the assessing officer's reliance on petitioner's personal property statements which were represented as full and true statements of all tangible personal property owned or held by petitioner.** [FN3] It is undisputed that ***the assessing officer did not conduct any independent***

> ***inventory as to petitioner's assets***; accordingly, the assessor's "mistake of fact" was his erroneous belief that petitioner's disclosure of property was accurate. **The direct cause of petitioner's excess payment of the taxes was its own mistake as to the nature of its personal property. In other words, its "mistake of fact" was its erroneous belief that it owned specific personal property that was taxable. Because the assessing officer and petitioner were not operating under the same mistake of fact, a refund under MCL 211.53a was not available** and petitioner failed to state a **cognizable** claim under MCL 205.735." (**Ford v. Sterling Heights,** unpublished opinion per curiam of the Court of Appeals, Decided [October 5, 2004] (Docket NO. 246379) at p. 4.)(Appellants Appendix at p. 69a). (Emphasis Added)

The Michigan Court of Appeals is right. There was no mutual mistake. The Plaintiff was not entitled to a refund under MCL 211.53a.

1. **MCL 211.53a Only Allows for a Refund Where There is a Mutual Mistake of Fact**.

MCL 211.53a states that if a taxpayer pays taxes in excess of the correct and lawful amount due because of a mutual mistake of fact made by the assessing officer and the taxpayer, the taxpayer may then recover the excess paid. This does **not** apply here.

> "Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest." (MCL 211.53a)

The Michigan Tax Tribunal examined MCL 211.53a in **General Products Delaware Corporation** v **Township of Leoni and County of Jackson**, 2001 WL 432245 (MTT Docket No. 249550, March 8, 2001)(**Appellee's Appendix at p. 6b**)

through a detailed dissection of the actual statutory language.[1]

> "As a basic step in review of the issues, the Tribunal will examine the statute's [MCL 211.53a] words and phrases for clues to the manner in which a "mutual mistake of fact" claim qualifies for relief." (**General Products** at p. 1) (**Appellee's Appendix at p. 18b**)

This examination focused on the terms "because of," "mutual mistake," and "fact" as they are used in the statute:[2]

a. **The Term "Because Of" Requires that the Over Assessment and Payment of Taxes Occur as a Result Of A Mutual Mistake Occurring Prior in Time**.

According to the Tribunal, the phrase "because of" signifies that the assessment and payment of taxes must occur as a result of a mutual mistake occurring prior in time to the assessment.

> "The phrase "because of" is one of the more important defining criteria of the statute, and one which appears to have been overlooked by the parties in their briefs. The dictionary definition for the word "because" is "for the reason that; since." Usage is defined: "Because is the most direct of the conjunctions used to express cause or reason. It is used to state an immediate and explicit cause…Of note is that the cause or reason is separately distinguished from the erroneous assessment and taxes, a form of cause and effect. They are not the same; that is, the error or mistake occurs separate from the overage condition of the assessment/taxes. The excess assessment and taxes are

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[1] The foregoing analysis and definition of "mutual mistake of fact" in the **General Products** case as that term is used in MCL 211.53a, is central to this Appeal because it is the Tribunal's own interpretation of a taxing statute which the Tribunal itself enforces and administers. Pursuant to **Rose Hill Center** v **Holly Township**, 224 Mich App 28, 31; 568 NW2d 332 (1997), **Maxitrol Company** v **Dep't of Treasury**, 217 Mich App 366;551 NW2d 471 (1996), and **Thrifty Royal Oak, Inc.**,v **Royal Oak**, 208 Mich App 707;528 NW2d 205 (1995), the Court of Appeals will generally defer to the Tribunal's interpretation of taxing statutes which it is entrusted to administer.

[2] The Tribunal also examined the phrases "any taxpayer"; "assessed and pays taxes" and "in excess" and found that the meaning of these terms was plain and unambiguous requiring no further examination.

not the error or mistake. The statute's phrase "because of" requires that separation." (**General Products** at p 14) (**Appellee's Appendix at p. 19b**)

b. **The Term "Mutual Mistake" Requires An Understanding Possessed in Common Between the Two Parties Which Arose Out of Specific Contemplation of an Erroneous Fact**.

According to the Tribunal, the phrase "mutual mistake" requires an understanding which is possessed in common between two parties that arises out of specific contemplation by each party through thoughtful observation and not simply a casual ordinary review:

> "...the statute's [MCL 211.53a] phrase "mutual mistake of fact" necessitates mutuality as to both the referenced fact being materially the same information, specifically contemplated by both parties, and the mistaken belief concerning that fact be formed by both parties. Specific contemplation is not casual, as in the ordinary process of reviewing numerous fact items (for example, in the course of assessing/appraising) without addressing the specific pertinent fact or set of facts in the context of the mistake. The word "contemplation" is defined as "thoughtful observation"...Without that specific "thoughtful observation" pertaining to the facts, there can be no mistaken belief formed.(**General Products** at p 15,16) (**Appellee's Appendix at p. 20b, 21b**)

c. **The Term "Fact" Requires the Actual Knowledge of Something At Issue By Both Parties**.

Finally, the term "fact" is important because it signifies a specific fact which must be known to both parties (**General Products** at p.16) (**Appellee's Appendix at p. 21b**) Without knowledge of the same "fact" at issue, there can be no mutual mistake relative to that "fact" (**General Products** at p.16) (**Appellee's Appendix at p. 21b**)

In order to have a mutual mistake of fact under MCL 211.53a, both parties must have actual knowledge of a fact which arose out of specific thoughtful contemplation by

both parties that caused an improper assessment to then be made. This definition was so important that the Tribunal designated this definition as precedential: [3]

> "The Michigan Tax Tribunal declares that the attached multiple dispositive Orders entered in this matter on March 8, 2001, dismissing the case for lack of Tribunal jurisdiction pursuant to MCL 211.53a, in which the phrase "mutual mistake of fact" is defined, as that phrase is used in MCL 211.53a..., to be PRECEDENTIAL, and is to be PUBLISHED. IT IS SO ORDERED." (**General Products** at p.1) (**Appellee's Appendix at p. 6b**)

Here, the record facts confirm that there was no mutual mistake.

2. The "Mistake" at Issue was Admittedly Committed Only by Appellant and was Therefore Unilateral in Nature.

Prior to its 1999 personal property assessment (Appellant's Petition is unclear as to a specific date), Appellant allegedly sold certain property in a "sale/leaseback" transaction (**Appellant's Appendix at p. 38a-41a, paragraph 8a**). Following this transaction, Appellant allegedly failed to remove the sold property from its books and records. This is admitted by the Appellant in the controlling record and found at paragraph 8a of Appellant's Petition:

> "...Appellant capitalized the Leased property..., but did not remove the Sold property despite the fact that it had been sold. As a result, both the Sold property and the Leased Property...were separately carried on Appellant's books and reported for property tax purposes." (**Appellant's Appendix at p. 38a-41a, paragraph 8a**)

Appellant -- on its own -- subsequently created a personal property statement for the year 1999 (**Appellee's Appendix at p. 1b**). Appellant, through its agent, clearly

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[3] Appellant relies on the definition of mutuality contained in contract law cases. The Court of Appeals correctly rejected application of contract law principles because such principles "are not necessarily analogous to tax law principles. The relationship between the parties to a contract is vastly different from the association between the taxpayer and tax assessor." (**Ford at p. 5.**) (Appellant's Appendix at p. 70a)

submitted under oath that the personal property statement was a true and accurate reflection of all tangible personal property owned by Appellant as of the relevant taxing date (**Appellee's Appendix at p. 1b**). This personal property statement was then sent to Appellee.

Appellee, having no knowledge of what property was in fact owned or not owned by Appellant, reasonably relied on the reported information to generate an assessment. Appellant's personal property statement, as with all such statements, does not indicate or delineate one piece of property from another (**Appellee's Appendix at p. 1b**). Only figures are reported (**Appellee's Appendix at p. 1b**). Therefore, Appellee could not have known that Appellant had erroneously reported the same piece of property more than once, or even that Appellant was reporting non-existent property. In fact, the personal property statement at issue contains a clear and unambiguous declaration ***under oath*** signed by the Appellant's own agent which states as follows:

> "I, Susan Van Wagenen, being duly sworn, depose and say that the above is a full and true statement of all tangible personal property owned or held by Ford Motor Company in this assessing district on the thirty-first (31st) day of December, 1998." (**Appellee's Appendix at p. 2b**)

Thus, at the moment Appellee received the personal property statement, the error had already occurred. The Appellee was not involved in Appellant's inventory or analysis of its own property, nor was Appellee involved in the reporting of the information. In fact, Appellee had no access to the information whatsoever. As a result, there was no specific contemplation through thoughtful observation by the Appellee. Instead, the Appellee simply reviewed the personal property statement in the ordinary

process of its assessing and relied on the Appellants personal property statement in making its assessment.

As stated above, the phrase "mutual mistake" requires more than simply a casual ordinary review in order for a mutual mistake of fact to exist:

> "**Specific contemplation is not casual, as in the ordinary process of reviewing numerous fact items (for example, in the course of assessing/appraising)** without addressing the specific pertinent fact or set of facts in the context of the mistake. The word "contemplation" is defined as "thoughtful observation"...Without that specific "thoughtful observation" pertaining to the facts, there can be no mistaken belief formed.(**General Products** at pp. 16) (**Appellee's Appendix at p. 21b**) (Emphasis Added)

Here, there was no specific thoughtful contemplation and as a result the Court of Appeals properly ruled that there was no mutual mistake of fact.

B. The Court of Appeals Correctly Ruled That The Tribunal Committed No Error of Law, That It Did Not Apply Incorrect Legal Principals, and That Its Factual Findings Were Supported By The Competent, Material and Substantial Evidence On The Record As A Whole.

1. The Court of Appeals Review of Tribunal Decisions is Limited

As this Michigan Supreme Court knows, the authority of the Court of Appeals to review a decision of the Tax Tribunal is limited. In the absence of an allegation of fraud, the Court of Appeals review is limited to determining whether the Tribunal committed an error of law or adopted a wrong legal principle.

> "Furthermore, court review of decisions of the tax tribunal, in the absence of fraud, is limited to determining whether the tribunal made an **error of law** or adopted a wrong principle; the factual findings of the tribunal are final, provided that they are supported by competent and substantial evidence." (**Antisdale** v **City of Galesburg**, 420 Mich. 265; 362 NW2d 632, 637 (1984).) (Emphasis Added)

The Tribunal's factual findings will not be disturbed as long as they are supported by

competent, material, and substantial evidence on the whole record. **Michigan Milk Producers Ass'n v Dep't of Treasury**, 242 Mich App 486, 490-491; 618 NW2d 917 (2000).

Here, the Court of Appeals reviewed the record established at the Tribunal. This record consisted of the Appellant's Petition and Appellee's Motion for Summary Disposition in lieu of an answer. Appellant chose ***not*** to respond to the Motion for Summary Disposition.[4] The facts of this case therefore were undisputed. In its opinion granting Summary Disposition in favor of Appellee, the Tribunal made the following findings of fact:

> "(II) Petitioner sold the property in a sale/leaseback transaction. . . prior to being sold, the property was carried on Petitioner's books as Petitioner's personal property. . . after leasing back the sold property, Petitioner capitalized the leased property. . . on its books, but did not remove the sold property despite the fact that it had been sold. . . as a result, both the sold property and the lease property (which are in fact the identical physical property) were separately carried on Petitioner's books and reported for property tax purposes. . . the effect was the mistake in reporting of duplicative property that did not exist. . . erroneously believing that both the sold property and the leased property separately existed, the assessing officer mistakenly assessed the same property twice.'" (Appellants Appendix at p. 42a) (**Ford** v. **Sterling**, 2004 WL 2238633, (MTT Docket No. 246379, October 5, 2004).)

Each of these findings of fact confirms that the mistake was unilateral on the part of the Appellant and not the result of a mutual mistake of fact made by the Appellant and the assessing officer. Based on these findings of fact, the Court of Appeals properly found that the Tribunal had the right and duty, to dismiss the action.

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[4] The Tribunal in its Order noted that the Appellant failed to file a response to the Appellee's Motion to Dismiss. (Appellant's Appendix at p. 42a)

> "The pleadings showed that respondent was entitled to judgment as a matter of law since the averred over-assessment and excess payment were not the result 'of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer.' MCL 211.53a. Accordingly, the MTT had the right, and duty, to dismiss the action." (**Ford** at p. 7) (Appellant's Appendix at p. 72a)

The Court of Appeals must be affirmed.

C. **The Michigan Court of Appeals Opinion in General Products v. City of Leoni, Unpublished Opinion Per Curiam of the Court of Appeals, Decided [May 8, 2003] (Docket No. 233432) is Directly on Point.**

While the Michigan Court of Appeals ruling in **General Products** v. **City of Leoni**, unpublished opinion per curiam of the Court of Appeals, Decided [May 8, 2003] (Docket No. 233432) (Appellee's Appendix at p. 43b) is not binding on this Michigan Supreme Court, the facts are almost identical and the Michigan Court of Appeals reasoning is persuasive. In **General Products**, the tax payer, General Products like the Appellant here submitted an inaccurate personal property statement which led to a higher assessment of taxes.

> "Petitioner filed the petition seeking to recover a portion of the personal property taxes paid to Leoni Township believing that it had made an overpayment. The petition alleged that when petitioner prepared its personal property statements, and then filed them with Leoni Township, it overpaid due to seven "mutual mistakes of fact" involving distinct categories of property. Specifically, petitioner alleged the following were "mutual mistakes of fact:" (1) various types of personal property were misidentified as to their year of acquisition; (2) assets that had been disposed of were reported and taxed as if still owned or possessed by General Products; (3) exempt special tools were taxed; (4) various types of personal property were reported and/or taxed in the wrong property classification; (5) computer software was misclassified as taxable personal property; (6) exempt industrial facilities personal property was misclassified and taxed; and (7) certain real property consisting of raw materials and building improvements were misclassified and taxed as personal property. Leoni Township utilized the information provided by petitioner on its personal property statements, resulting in the alleged incorrect

> assessments." (**General Products** v. **City of Leoni**, unpublished opinion per curiam of the Court of Appeals, Decided [May 8, 2003] (Docket No. 233432) at p. 1) (**Appellee's Appendix at p. 43b**)

The Michigan Court of Appeals in **General Products** found that there was no mutual mistake of fact because General Products mistake was based on its own incorrect inventory and analysis of its own property and any incorrect assessment was based on the actual representations contained on the personal property statement. Consequently there was a different basis for each of the two mistakes.

> "Here there was no mutuality because petitioner's mistake was based on its incorrect inventory and analysis of its property. The assessor's mistake was based on petitioner's representations on its personal property statement. Thus, there was a different basis for each of the two mistakes made." (**General Products** v. **City of Leoni**, unpublished opinion per curiam of the Court of Appeals, Decided [May 8, 2003] (Docket No. 233432) at p. 2-3) (**Appellee's Appendix at p. 44b, 45b**)

> "When taken as a whole, the plain meaning of the statute, case law, statutory interpretation, and the availability of another remedy indicate that the Tribunal was correct in its determination that this situation did not present a "mutual mistake of fact" and was not properly brought under M.C.L. § 211.53a. There were two separate, but related events in this case. The first was a unilateral mistake made by petitioner in its preparation of its personal property statement. The second event was respondent's reliance on petitioner's assertions in making its assessment. There was no "mutual mistake" because each party had different information on which to base their ultimate conclusions." (**General Products** v. **City of Leoni**, unpublished opinion per curiam of the Court of Appeals, Decided [May 8, 2003] (Docket No. 233432) at p.5-6) (**Appellee's Appendix at p. 47, 48b**)

The Michigan Court of Appeals rejected General Products argument that by accepting General Products personal property statement the assessor made the same mistake as General Products.

> "Appellant argues that by accepting this statement, the assessor is adopting it as his belief and should be deemed to have made the same mistake as the appellant. However, this is contrary to the

> plain meaning of the term "mutual mistake" of fact. In essence, appellant is asking that its unilateral mistake be imputed to the assessor and reclassified as a mutual mistake of fact." (**General Products** v. **City of Leoni**, unpublished opinion per curiam of the Court of Appeals, Decided [May 8, 2003] (Docket No. 233432) at p. 3) (**Appellee's Appendix at p. 45b**)

Here, the Appellant like **General Products** made a mistake on its personal property statement. This mistake was relied upon by the Appellee in the same manner that the City of Leoni relied upon General Products personal property statement. Just because the Appellee here accepted and relied upon Appellant's sworn personal property statement does not mean that the Appellee's assessor adopted Appellant's personal property statement as his own personal belief of what property the Appellant had. Quite simply the Appellant's own mistake cannot be imputed to the Appellee's assessor and then reclassified as a mutual mistake of fact. Accordingly, Appellant's error in reporting its own property statement is simply a unilateral mistake. The Michigan Court of Appeals ruling in the case at hand finding no mutual mistake of fact must be affirmed.

D. The Cases Relied on by Appellant are Distinguishable and Irrelevant.

1. Appellant's Reliance on Consumers Power v. Muskegon, 346 Mich. 243; 78 NW2d 223 (1956) is Misplaced

Here, Appellant relies heavily on the case of **Consumers Power v. Muskegon**, 346 Mich 243; 78 NW2d 223 (1956). This reliance is misplaced. **First**, the **Consumers Power** case took place prior to the enactment of MCL 211.53a. The effective date of the enactment of MCL 211.53a is September 13, 1958. (See: PA 1958, No. 209c Sec 1) This Michigan Supreme Court issued its Opinion in **Consumers Power** on September 4, 1956. Consequently, this Michigan Supreme Court's Opinion in **Consumers Power**

pre-dates MCL 211.53a. The term "mutual mistake" as intended by the legislature in MCL 211.53a did not even exist at the time that this Michigan Supreme Court rendered its Opinion in **Consumers Power**. In fact, the majority ruled in **Consumers Power** that under the then existing statute even if there was a mutual mistake of fact tax payers still can't recover their taxes. Today the opposite is true.

> "To grant the relief requested by the plaintiff would require this Court to exercise legislative prerogatives – namely, to write into the statute the right to recover taxes paid under mutual mistake. This cannot be done." (**Consumers Power**, 346 Mich. at p. 251.)

Thus, **Consumers Power**, is simply not based on the now existing language contained in MCL 211.53a. **Consumers Power** offers no precedent in this matter persuasive or otherwise.

Second, the facts of **Consumers Power** are distinguishable from the facts in this case. In **Consumers Power**, the township supervisor made a mathematical/clerical error in computing the assessment resulting in an overpayment by the taxpayer.

> "Here a taxpayer, by reason of arithmetical mistakes by a township supervisor, paid substantially 10 times as much tax as was properly due and owing." (**Consumers**, 346 Mich at p. 252 – Justice Smith's Dissent)

Here, there was no arithmetical mistake made by the Appellee. Instead, the mistake was made by the Appellant. As a result, the facts at hand are completely distinguishable from the facts in **Consumers**.

2. Appellant's Reliance on Spoon-Shacket Company v. County of Oakland, 356 Mich. 151; 97 NW2d 25 (1959) is Misplaced.

As with **Consumers Power**, Appellant's reliance on the case of **Spoon-Shacket Company v. County of Oakland**, 356 Mich 151; 97 NW2d 25 (1959), is equally misplaced. Again, as with the **Consumers Power** case, this Michigan Supreme Court

did not rely on MCL 211.53a. Instead, this Michigan Supreme Court in **Spoon-Shacket** relied on equitable principles, thus adopting the dissenting opinion from **Consumers Power**. The equitable principles underlying both the dissent in the **Consumers Power** case and the majority in **Spoon-Shackett**, however, are **not** analogous to this case. In **Spoon-Shackett**, the Supreme Court described these principles:

> "...that equity can and should intervene whenever it is made to appear that one party, public or private seeks unjustly to enrich himself at the expense of another ***on account of his own mistake***..."(Emphasis added)(**Spoon-Shacket** at 156).

In **Spoon-Shacket** the overpayment of taxes originated with an error by the taxing unit.

> "'In 1955 a number of homes were built in the subdivision, and in preparing the tax rolls the new homes were assessed by the new city of Madison Heights at a more or less uniform valuation of $5500.00 each. Through inadvertence or mistake the assessing officer did not discover that Lots 65-83, inclusive, had remained vacant and they too, were assessed at $55000.00 each for tax purposes.'" (**Spoon-Shacket**, 356 Mich at p. 153.)

Here, there was no error which originated from Appellee's assessor. Appellee is thus not trying to unjustly enrich itself at Appellant's expense because of Appellee's own mistake. In the case at hand, the mistake is a result of the Appellant's own negligence and as a result is not subject to principles of equity. The Michigan Court of Appeals put it best when it ruled in the case at hand:

> "In other words, 'mistakes' that are the result of the mistaken party's own negligence, and which are to their detriment, are not relieved by equity. See e.g., ., Bateson *v. Detroit,* 143 Mich. 582, 584; 106 NW 1104 (1906); *Dombrowski v. Omer,* 199 Mich.App 705, 709-710; 502 NW2d 707 (1993); *Villadsen v. Villadsen,* 123 Mich.App 472, 477; 333 NW2d 311 (1983)." (**Ford** at p. 6) (Appellants Appendix at p. 71a)

Therefore, **Spoon-Shacket** offers no persuasive precedent in this matter.

V. CONCLUSIONS AND RELIEF REQUESTED

Wherefore, the Appellee, City of Sterling Heights respectfully requests that this Honorable Michigan Supreme Court enter an Order:

(I) Affirming the Michigan Court of Appeals; and

(II) Granting such other relief in favor of the Appellee, City of Sterling Heights as this Michigan Supreme Court deems just equitable and appropriate.

Respectfully submitted,

O'REILLY RANCILIO P.C.

By: _____
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Attorney for Appellee Sterling Heights

DATED: January 17, 2006.

PROOF OF SERVICE

I served the foregoing document upon the attorneys of record and/or parties in this case on January 17, 2006. I declare the foregoing statement to be true to the best of my information, knowledge and belief.

✗ U.S. Mail
❑ Hand Delivered
❑ Express Mail Private
❑ Fax
❑ Messenger
❑ Other:

_____
Elaine Michling

J:\STERLING\MTT\Ford Motor\Supreme Court\Brief on Appeal.doc